

ORIGINAL

EX PARTE

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Room TW-A325  
Washington, DC 20554

RECEIVED

DEC 20 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

Re: *Private Spectrum Allocation in WT Docket No. 99-168*

Dear Ms. Salas:

During our recent discussions with several Commission staff members, PCIA presented recommended guidelines for the allocation of private radio spectrum at 746-806 MHz and its assignment through band managers. Among PCIA's proposed safeguards for ensuring the appropriate use of this private radio spectrum, PCIA recommended that the Commission allow interconnection of private mobile systems to the public switched network ("PSN") but prohibit resale of interconnected spectrum, either by the entity that receives the spectrum through a band manager or by the band manager licensee directly.

Personal  
Communications  
Industry  
Association

We have again reviewed Section 332 of the Communications Act, the FCC's Order implementing this statute and current private mobile radio rules. Neither the Act nor the Commission's regulations currently attempt to limit a private user's interconnection to the PSN. In fact, the Commission's rules expressly provide for the interconnection of private mobile users. We see no reason to take a different course and prohibit the interconnection of private users in these particular bands. Rather, the Commission need only reiterate the conditions under which private mobile radio operates and ensure that band managers distribute this spectrum only to "eligible users" and that these users in turn commit to abide by the conditions of private mobile radio service.

Congress amended the Communications Act in 1993 to make a clear distinction between commercial and private uses of the radio spectrum. It created a three-part definition for "commercial mobile [radio] service" ("CMRS") that would be subject to common carrier regulation. CMRS would provide interconnected mobile radio service to the public (or a substantial portion of the public) for a profit.<sup>1</sup> If a service did not meet this three-part test, or operate as the functional equivalent of CMRS, it would be regulated as a private mobile service.<sup>2</sup> Congress expressed no reservations about private radio networks' continued interconnection to the PSN. Rather, it created a definition that requires a mobile service to meet all three parts of the definition in order to be subjected to common carrier regulation.

<sup>1</sup> 47 U.S.C. §332(d)(1).

<sup>2</sup> 47 U.S.C. §332(d)(2).

No. of Copies rec'd  
List ABCDE

042

As directed by Congress, the Commission issued regulations interpreting Section 332 in 1994.<sup>3</sup> There, the Commission correctly concluded that services not meeting the congressionally-established, three-part definition would be presumed to be private mobile services unless a public petitioner demonstrated otherwise.<sup>4</sup>

In considering the “for profit” aspect of the CMRS definition, the Commission concluded that a private user could not lease its excess internal-use capacity to the public as a for-profit service, but could establish cost-sharing arrangements with other eligible users subject to FCC regulations.<sup>5</sup> In considering the “to the public” prong of the CMRS test, the Commission concluded that licensees using the license for internal use, or offering the service to a restricted class of eligible users, would still be private systems. “Services among these Part 90 eligibility groups, or to internal users, is made available on only a limited basis to insubstantial portions of the public.”<sup>6</sup>

As for interconnection to the PSN, the Commission adopted the then-existing definition of interconnection used in the Part 90 Private Radio rules.<sup>7</sup> It did not, however, see a need to distinguish between commercial and private use of the spectrum when parsing the interconnection portion of the definition. The Commission thus implicitly recognized that private radio networks could continue to interconnect with the PSN without losing their private status. Today, the Commission’s rules explicitly provide for this type of interconnection. Local exchange carriers must provide interconnection to the PSN for all mobile service licensees, including private radio licensees.<sup>8</sup> The Private Land Mobile rules also establish detailed procedures for a private radio system’s interconnection to the PSN. The rules typically require notification to the Commission, interconnected operation on a secondary basis to dispatch operations, record keeping and agreements among co-channel users.<sup>9</sup>

---

<sup>3</sup> Implementation of Sections 3(n) and 332 of the Communications Act-Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411 (1994) (“CMRS Order”).

<sup>4</sup> “Therefore, we will presume that a mobile service that does not meet the definition of CMRS is a private mobile service. This presumption may be overcome only upon a showing by a petitioner challenging the PMRS classification that the mobile service in question is the functional equivalent of a commercial mobile radio service.” CMRS Order at 1447; See also Section 20.9(b) of the Commission’s rules for procedures for challenging this presumption.

<sup>5</sup> CMRS Order at 1430; See 47 C.F.R. §90.179 for rules on shared use systems.

<sup>6</sup> Id. at 1440. “We conclude that it was Congress’s intent that making service available to, or among, the eligible users in the above-stated private mobile radio services, does not constitute service that is “effectively available to a substantial portion of the public.” The Commission then recognized that it could redesignate what constitutes an “eligible user” at a later date. Id. at footnote 133.

<sup>7</sup> Id. at 1435.

<sup>8</sup> 47 C.F.R. §§20.7, 20.11.

<sup>9</sup> 47 C.F.R. §§90.476, 90.477, 90.478.

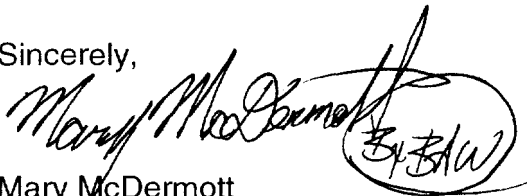
PCIA also notes that the Commission's rules clearly delineate which of its radio services fall within the CMRS and private radio definitions.<sup>10</sup> The Commission is of course free to modify these rules in the context of the instant proceeding. The Commission can also institute enforcement actions against band manager licensees who fail to follow existing rules or fail to appropriately supervise spectrum users in the appropriate use of spectrum designated for private mobile radio uses.

PCIA does not believe, however, that it is necessary to handicap the potential private uses of these bands by imposing an absolute interconnection prohibition. Users who receive spectrum through band managers should be able to use it for internal dispatch service and to place calls to the PSN. In fact, today's technology dictates that private users have single handsets that are capable of dispatch and PSN calling.

Nothing in the band manager concept per se suggests that private radio spectrum assigned in this way is more susceptible to abuse simply due to its interconnection capability. PCIA respectfully requests that you not restrict any private radio frequencies allocated in this proceeding from the option of interconnection to the PSN consistent with existing Commission rules and procedures.

Pursuant to Section 1.1206 of the Commission's Rules, PCIA is filing one original and one copy of this letter with your office. If you have any questions regarding this filing, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary McDermott", with a circular flourish at the end.

Mary McDermott  
Senior Vice President and Chief of Staff, Government Relations  
Personal Communications Industry Association

cc: Ari Fitzgerald  
Mark Schneider  
Adam Krinsky  
Brian Traymont  
Peter Tenhula  
Kathleen O'Brien Ham  
Jim Schlichting  
Mark Bollinger  
Tom Sugrue  
Gary Michaels  
Stan Wiggins  
Mary Liebman  
Ron Netro  
Kris Monteith

<sup>10</sup>

47 C.F.R. §20.9; See also CMRS Order at 1448-1463.